

# Senate Study Bill 3135 - Introduced

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
EDUCATION BILL)

## A BILL FOR

1 An Act relating to special education rights and duties and  
2 to the related duties and operations of the department of  
3 education and local school boards.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 256B.2, subsection 1, paragraph a, Code  
2 Supplement 2009, is amended to read as follows:

3 a. "*Children requiring special education*" means persons under  
4 twenty-one years of age, including children under five years of  
5 age, who have a disability in obtaining an education because  
6 of a head injury, autism, behavioral disorder, or physical,  
7 mental, communication, or learning disability, as defined by  
8 the rules of the department of education. If a child requiring  
9 special education reaches the age of twenty-one during an  
10 academic year, the child may elect to receive special education  
11 services until the end of the academic year.

12 Sec. 2. Section 256B.6, Code 2009, is amended to read as  
13 follows:

14 **256B.6 Parent's or guardian's duties — review.**

15 1. When the school district or area education agency has  
16 provided special education services and programs as provided  
17 herein for any child requiring special education, either  
18 by admission to a special class or by supportive services,  
19 it shall be the duty of the parent or guardian to enroll  
20 ~~said~~ the child for instruction in such special classes or  
21 supportive services as may be established, except in the  
22 event a doctor's certificate is filed with the secretary  
23 of the school district showing that it is inadvisable for  
24 medical reasons for the child requiring special education to  
25 receive the special education provided; all the provisions  
26 and conditions of chapter 299 ~~and amendments thereto~~ shall  
27 be applicable to this section, and any violations shall be  
28 punishable as provided in ~~said~~ chapter 299.

29 2. A child, or the parent or guardian of the child, or the  
30 school district in which the child resides, may obtain a review  
31 of an action or omission of ~~state or~~ local authorities pursuant  
32 to the procedures established by the state board of education  
33 on the ground that the child has been or is about to be:

34 ~~1-~~ a. Denied entry or continuance in a program of special  
35 education appropriate to the child's condition and needs.

1     ~~2.~~ b. Placed in a special education program which is  
2 inappropriate to the child's condition and needs.

3     ~~3.~~ c. Denied educational services because no suitable  
4 program of education or related services is maintained.

5     ~~4.~~ d. Provided with special education which is insufficient  
6 in quantity to satisfy the requirements of law.

7     ~~5.~~ e. Assigned to a program of special education when the  
8 child does not have a disability.

9     3. When a child requiring special education attains the  
10 age of majority or is incarcerated in an adult or juvenile,  
11 state or local, correctional institution, all rights accorded  
12 to the parent or guardian under this chapter transfer to the  
13 child except as provided in this subsection. Any notice  
14 required by this chapter shall be provided to both the child  
15 who has reached the age of majority or is incarcerated in an  
16 adult or juvenile, state or local, correctional institution,  
17 and the parent or guardian. If rights under this chapter have  
18 transferred to the child and the child has been determined  
19 to be incompetent by a court or determined unable to provide  
20 informed educational consent by a court or other competent  
21 authority, then rights under this chapter shall be exercised by  
22 the person who has been appointed to represent the educational  
23 interest of the child. The director of the department of  
24 education may establish standards for determining whether  
25 a public agency, as defined in section 28E.2, is competent  
26 to determine whether a child is unable to provide informed  
27 educational consent, and the procedures by which such  
28 determination shall be made and reviewed.

29     4. Notwithstanding section 17A.11, the state board of  
30 education shall adopt rules for the appointment of an impartial  
31 administrative law judge for special education appeals. The  
32 rules shall comply with federal statutes and regulations.

33     Sec. 3. Section 256B.8, unnumbered paragraph 2, Code 2009,  
34 is amended to read as follows:

35     An area education agency director of special education may

1 request approval from the department of education to continue  
2 the special education program of a person beyond the ~~person's~~  
3 ~~twenty-first birthday~~ period specified in section 256B.2,  
4 subsection 1, paragraph "a", if the person had an accident or  
5 prolonged illness that resulted in delays in the initiation of  
6 or interruptions in that person's special education program.  
7 Approval may be granted by the department to continue the  
8 special education program of that person for up to three years  
9 or until the person's twenty-fourth birthday.

10 Sec. 4. Section 256B.11, Code 2009, is amended to read as  
11 follows:

12 **256B.11 Program plans.**

13 1. Program plans submitted to the department of education  
14 pursuant to section 273.5 for approval by the director of the  
15 department of education shall establish all of the following:

16 ~~1- a.~~ a. That there are sufficient children requiring special  
17 education within the area.

18 ~~2- b.~~ b. That the service or program will be provided by the  
19 most appropriate educational agency.

20 ~~3- c.~~ c. That the educational agency providing the service or  
21 program has employed qualified special educational personnel.

22 ~~4- d.~~ d. That the instruction is a natural and normal  
23 progression of a planned course of instruction.

24 ~~5- e.~~ e. That all revenue raised for support of special  
25 education instruction and services is expended for actual  
26 delivery of special education instruction or services.

27 ~~6- f.~~ f. Other factors as the state board may require.

28 2. Notwithstanding subsection 1 and section 273.5,  
29 subsection 6, the director of the department of education may  
30 authorize the area education agency to submit a statement  
31 assuring that the requirements of subsection 1 are satisfied  
32 in lieu of submitting a special education instructional and  
33 support program plan.

34 Sec. 5. Section 256B.15, subsection 7, Code 2009, is amended  
35 to read as follows:

1     7. The area education agencies shall transfer to the  
2 department of ~~education~~ human services an amount equal to  
3 ~~eighty-four percent~~ the nonfederal share of the payments  
4 received from the medical assistance program ~~provided~~ pursuant  
5 to chapter 249A. The nonfederal share amount shall be  
6 transferred to the medical assistance account prior to claims  
7 payment. This requirement does not apply to medical assistance  
8 reimbursement for services provided by an area education agency  
9 under part C of the federal Individuals With Disabilities  
10 Education Act. Funds received under this section shall not be  
11 considered or included as part of the area education agencies'  
12 budgets when calculating funds that are to be received by area  
13 education agencies during a fiscal year.

14     Sec. 6. Section 257.11, subsection 8, Code Supplement 2009,  
15 is amended to read as follows:

16     8. *Pupils ineligible.* A pupil eligible for the weighting  
17 plan provided in section 256B.9 is not eligible for  
18 supplementary weighting pursuant to this section unless it  
19 is determined that the course generating the supplemental  
20 weighting has no relationship to the pupil's disability. A  
21 pupil attending an alternative program or an at-risk pupils'  
22 program, including alternative high school programs, is not  
23 eligible for supplementary weighting under subsection 2.

24     Sec. 7. STATE MANDATE FUNDING SPECIFIED. In accordance  
25 with section 25B.2, subsection 3, the state cost of requiring  
26 compliance with any state mandate included in this Act shall  
27 be paid by a school district from state school foundation aid  
28 received by the school district under section 257.16. This  
29 specification of the payment of the state cost shall be deemed  
30 to meet all of the state funding-related requirements of  
31 section 25B.2, subsection 3, and no additional state funding  
32 shall be necessary for the full implementation of this Act  
33 by and enforcement of this Act against all affected school  
34 districts.

1 EXPLANATION

2 This bill makes Code changes related to special education  
3 rights, duties, and responsibilities.

4 The bill amends Code section 256B.2 to add to the definition  
5 of "children requiring special education" a provision allowing  
6 such a child who reaches age 21 during an academic year to  
7 elect to continue to receive special education services until  
8 the academic year ends. A conforming change is made to Code  
9 section 256B.8.

10 The bill also provides that when a child requiring special  
11 education attains the age of majority or is incarcerated in a  
12 correctional institution, the rights of the child's parent or  
13 guardian transfers to the child, and any notice to that child's  
14 parent or guardian must also be provided to the child. If the  
15 child is determined to be incompetent, these rights shall be  
16 exercised by the person appointed to represent the educational  
17 interests of the child.

18 The bill authorizes the director of the department of  
19 education to establish standards and procedures for determining  
20 whether a public agency is competent to determine whether a  
21 child is unable to provide informed educational consent, and  
22 to authorize an area education agency to submit a statement  
23 assuring its special education instruction and support program  
24 plan meets the specific requirements established in Code  
25 section 256B.11, subsection 1, rather than require the agency  
26 to submit the actual plan to the department for approval.

27 The bill also directs area education agencies to transfer to  
28 the department of human services, rather than the department  
29 of education as provided in current law, an amount equal to  
30 the nonfederal share of the payments received from the medical  
31 assistance program, rather than 84 percent as provided in  
32 current law, of payments received for medical assistance  
33 services provided to children requiring special education.

34 The bill also provides that a pupil who is eligible  
35 for special education weighting is not also eligible for

1 supplementary weighting unless the course generating the  
2 supplementary weighting has no relationship to the pupil's  
3 disability.

4     The bill may include a state mandate as defined in Code  
5 section 25B.3. The bill requires that the state cost of  
6 any state mandate included in the bill be paid by a school  
7 district from state school foundation aid received by the  
8 school district under Code section 257.16. The specification  
9 is deemed to constitute state compliance with any state mandate  
10 funding-related requirements of Code section 25B.2. The  
11 inclusion of this specification is intended to reinstate the  
12 requirement of political subdivisions to comply with any state  
13 mandates included in the bill.